

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2379 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KALAVATIBEN SHANTILAL SHETH

Versus

SALES TAX OFFICER & ANR.

Appearance:

MR A. HAMEED KURESHI for Petitioner

MR ND GOHIL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/10/96

ORAL JUDGMENT

Heard learned counsel for the parties. Challenge is made by the petitioner, in this Special Civil Application, to the order of the Sales Tax Department dated 24/27.8.96, under which the property of the petitioner situated at Block No.D-2, Akashdeep Cooperative Housing Society Ltd., Navarngpura, Ahmedabad, was sought to be auctioned for the alleged sales tax dues

against Navbharat Automobiles.

2. The learned counsel for the petitioner contended that Navbharat Automobiles was sole proprietary concern of the petitioner's husband in which she has no interest whatsoever and as such, her property could not have been auctioned. The learned counsel for the petitioner further contended that the order dated 24/27.8.84 has been made without giving any notice or opportunity of hearing to the petitioner and as such it is against the principles of natural justice.

3. On the other hand, the learned counsel for the respondent contended that the property in question could be put to auction by respondent for recovery of amount of Rs.1,77,475/-, being sales tax dues against the husband of the petitioner.

4. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

5. I do not consider it appropriate to go on all the contentions raised by learned counsel for the parties in this case as I find sufficient merits in the last contention made by the learned counsel for the petitioner on which this writ petition deserves acceptance. Before any adverse order is made against a person which effects to the extent of putting his/her property to auction against the recovery of sales tax dues of his/her relative, it is expected of the respondent to give a notice and opportunity of hearing to the holder of the property which is to be auctioned. The petitioner has filed this petition before this Court and and she has also been protected by way of interim relief. When such a grievance has been made by the petitioner, then the respondent should have considered this aspect independently and instead of allowing this petition to remain pending before this Court for all these years, as well as continue the stay order against the recovery of handsome amount, it should have decided the matter after giving notice and opportunity of hearing to the petitioner. The petitioner may have defence or not, but when she has come up with the case that the property in question could not have been put to auction for recovery of sales tax dues against her husband, then she should have been given an opportunity of hearing and after considering her objections, the authorities should have passed a speaking order and then it could have proceeded further, which has not been done in the present case. This point has been taken by the petitioner in this Special Civil Application and Rule has been issued after

notice to the respondent. It is also a fact to be noticed that the respondent has not filed any reply to this petition. After hearing the petitioner, the respondent could have come to the conclusion that her property could be put to auction for recovery of sales tax dues against her husband or not, but this petition remained pending for all these years as the respondents have not considered the matter objectively even after filing of this Special Civil Application. For all these years, reply has also not been filed and the facts stated in this Special Civil Application stand uncontroverted. The recovery of sales tax dues to the tune of rupees one lac and odd remained stayed for all these years as the respondent has not decided the matter at its own end when such a plea has been taken and by now that amount would have been recovered either from the petitioner or in case not recovered from her then from her husband or from other sources. Merely because petition is pending, I fail to see any justification in the action of the respondents not to consider the case objectively. In case the respondents were sure that no notice is required to be given to the petitioner then it should have come up with specific case by filing reply, which has not been done in the present case. Be that as it may. Interest of justice will be met in case, this Special Civil Application is disposed of with directions to the respondents to give a notice and an opportunity of hearing to the petitioner in the matter and then only pass appropriate order to put her property in auction for recovery of alleged dues of Navbharat automobiles. The petitioner is directed to present herself in the office of the Respondent No.1 either personally or through her representative on 25th November 1996. A certified copy of this order is also to be submitted by the petitioner before the said authority. The respondents shall thereafter decide the matter within a period of three months. Till then, interim relief granted by this Court shall continue. The office is directed to sent writ forthwith. Rule stands disposed of in aforesaid terms with no order as to costs.

.....

(sunil)